

RICHARD J. DiMARCO

IBLA 81-169

Decided March 5, 1981

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer U 45032.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an offer for a noncompetitive oil and gas lease creates no vested rights in the offeror; it only establishes the priority of filing. The offeror is not justified in relying on the expected issuance of a lease.

APPEARANCES: Mark H. Tuohey, III, Esq., Nixon, Hargrave, Devans & Doyle, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Richard J. DiMarco has appealed the November 5, 1980, decision of the Utah State Office, Bureau of Land Management (BLM), rejecting his noncompetitive oil and gas lease offer, U 45032, which received first priority for parcel No. 60 in the December 1979 simultaneous drawing. BLM rejected the offer based on a finding by the Geological Survey

(Survey) that the land in parcel No. 60 is within a known geologic structure of a producing oil and gas field (KGS) effective September 15, 1980.

In his statement of reasons, appellant argues that BLM should be estopped from rejecting his offer because it represented to him following the December 1979 drawing until November 1980 ^{1/} that the parcel was available for leasing subject only to his meeting the regulatory qualifications, he relied on that representation in contracting to assign the lease which he believed would be forthcoming, and BLM should have known that the representations would be relied on. In addition, appellant asserts that BLM knew that a lease could not issue prior to a determination that it was not in a known geologic structure and had not so ascertained by the time of the December 1979 drawing with respect to parcel No. 60.

[1] Land within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding pursuant to 43 CFR 3120. 30 U.S.C. § 226(b) (1976). The drawing of an offer for a noncompetitive lease creates no vested rights in the offeror; it only establishes priority of filing. Guy W. Franson, 30 IBLA 123 (1977). 43 CFR 3110.1-6(b). Thus, if lands embraced in a noncompetitive offer are designated as being within a known geologic structure before issuance of a lease, the noncompetitive lease offer must be rejected as to those lands. Pauline C. Lebsack, 50 IBLA 361 (1980); Guy W. Franson, *supra*. 43 CFR 3110.1-8. This Department has no discretion under the law to issue a noncompetitive lease for such lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), *aff'd*, 494 F.2d 1156 (D.C. Cir. 1974).

We have no doubt that BLM fully intended to issue a noncompetitive lease to appellant after determining that he met the regulatory qualifications and would have so informed appellant up to October 1980 when BLM received notification from Survey that the lands covered by appellant's lease offer among others are part of the Castle Peak-Monument Butte KGS. However, appellant was only justified in relying on that information to the extent of asserting his first priority. The signing of an oil and gas lease offer by the authorized BLM officer is the act that constitutes acceptance of the lease offer made by appellant, and creates a binding contract. 43 CFR 3111.1-1(c). The date of signing is the date of lease issuance and the determinative date with respect to the rights of the offeror. Until that time appellant had no lease which he could rightfully assign and his improper reliance on the expectation of obtaining a lease is no basis for estopping BLM.

^{1/} We note that by Secretarial Order Nos. 3049 and 3051 (45 FR 30553, May 8, 1980) noncompetitive oil and gas leasing was suspended from February 29, 1980, through April 8, 1980, for applications pending before February 29, 1980. Appellant has indicated that he was aware of this moratorium.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

